

1 Cabinet for Health and Family Services

2 Office of the Kentucky Health Benefit Exchange

3 (New Emergency Administrative Regulation)

4 900 KAR 10:040E. Kentucky Health Benefit Exchange Consumer Assistance and  
5 Kynector Certification.

6 RELATES TO: KRS 194A.050(1), 42 U.S.C. Section 18031, 45 C.F.R. Parts 155.

7 STATUTORY AUTHORITY: KRS 194A.050(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family

9 Services, Office of the Kentucky Health Benefit Exchange, has responsibility to

10 administer the state-based American Health Benefit Exchange. KRS 194A.050(1)

11 requires the secretary of the cabinet to promulgate administrative regulations necessary

12 to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency

13 of the individual citizens of the Commonwealth; to operate the programs and fulfill the

14 responsibilities vested in the cabinet, and to implement programs mandated by federal

15 law or to qualify for the receipt of federal funds. This administrative regulation

16 establishes Consumer assistance program of the Office of the Kentucky Health Benefit

17 Exchange and the policies and procedures relating to the certification of kynectors

18 including a Certified Application Counselor, In-Person Assister, or Navigator in

19 accordance with 42 U.S.C. § 18031 and 45 C.F.R. Parts 155 and 156.

20 Section 1. Definitions.

21 (1) "Agent" is defined by KRS 304.9-020.

1 (2) "Certified application counselor" or "CAC" means an individual employed or  
2 volunteer of an entity described in 45 C.F.R. 155.225(a) who meets the requirements of  
3 section x of this section.

4 (3) "Department" or "DOI" is defined by KRS 304.1-050(2).

5 (4) In-Person Assister entity means an entity selected by the Office of KHBE that  
6 meets the requirements of section 4.

7 (5) "Issuer" is defined by 45 C.F.R. 144.103.

8 (6) "Insurance Affordability Programs" means one of the following:

9 (a) A state Medicaid program under title XIX of the Act;

10 (b) A state children's health insurance program (CHIP) under title XXI of the Act;

11 (c) A state basic health program established under section 1331 of the Affordable  
12 Care Act;

13 (d) A program that makes coverage in a qualified health plan through the Exchange  
14 with advance payments of the premium tax credit established under section 36B of the  
15 Internal Revenue Code available to qualified individuals; or

16 (e) A program that makes available coverage in a qualified health plan through the  
17 Exchange with cost-sharing reductions established under section 1402 of the Affordable  
18 Care Act.

19 (7) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based  
20 exchange conditionally approved by HHS under standards set forth in 45 C.F.R.  
21 155.105 to offer QHP's on January 1, 2014.

22 (8) "Kentucky Insurance Code" means KRS Chapter 304 and associated  
23 administrative regulations.

(9) "Kentucky Online Gateway" means the system for authentication services for users requesting access to the KHBE portal.

(10) "KHBE training" means the training established by the Office for Agents and kynectors.

(11) "Kynectors" means CACs, In-person assisters or Navigators.

(12) "Navigator entity" means an entity as described in 45 CFR 155.210 selected by the Office of KHBE who meets the requirements of section 5.

(13) "Office of the Kentucky Health Benefit Exchange" or "Office" means the office created under Executive Order 2012-587.

(14) "Participating Agent" means an agent described in 45 C.F.R. 155.220 that is licensed by the DOI with a health line of authority who has registered with the exchange in accordance with 900 KAR 10: 050 and has been approved by KHBE to participate as an agent on the KHBE.

(15) "Qualified Health Plan" and "QHP" means a health plan that has in effect a certification issued by the KHBE that it meets the standards described in 45 C.F.R. 156 Subpart C.

## Section 2. KHBE Consumer assistance Programs.

(1) This administrative regulation establishes Kentucky's kynector Program which shall meet the accessibility standards of 42 CFR 155.205(c) and includes:

(a) The Certified Application Counselors Program;

(b) The In-Person Assistance Program; and

(c) The Kentucky Navigator Program.

(2) (a) An individual providing consumer assistance shall receive training regarding

1 QHP options, insurance affordability programs, eligibility, and benefit rules and  
2 regulations governing all insurance affordability programs operated in the state and  
3 privacy and security standards, as established by the Office.

4 (b) The Kynector training shall be provided by the Office or an approved vendor.

5 (3) The Office and Kynector program shall refer consumers to other consumer  
6 assistance programs in Kentucky when available and appropriate.

### 7 Section 3. Certified Application Counselor Program.

8 (1) The Office shall certify staff and volunteers of Office-designated organizations  
9 and organizations designated by the Department for Medicaid Services and KCHIP  
10 agencies in accordance with 42 C.F.R. 435.908 to act as certified application  
11 counselors to:

12 (a) Provide information about insurance affordability programs and coverage options;

13 (b) Assist individuals and employees to apply for coverage in a QHP or insurance  
14 affordability programs through the KHBE; and

15 (c) Help to facilitate enrollment of eligible individuals in QHPs and insurance  
16 affordability programs.

17 (2) The Office shall certify an individual as an application counselor if the individual:

18 (a) Is identified by a designated organization described in section 3(1) as employed  
19 staff or a volunteer;

20 (b) Registers with the KHBE through the Kentucky Online Gateway;

21 (c) Receives KHBE training in accordance with section 2(2), prior to acting as a  
22 certified application counselor;

23 (d) Discloses to the Office and potential applicants any relationships the application

counselor or CAC's sponsoring organization has with QHPs or insurance affordability programs, or other potential conflicts of interest identified by the KHBE;

(e) Complies with the privacy and security standards adopted by the KHBE and consistent with 45 CFR 155.260, and applicable authentication and data security standards;

(f) Agrees to act in the best interest of the applicants assisted;

(g) Complies with applicable Kentucky law related to application counselors, including but not limited to state law related to conflicts of interest;

(h) Provides information with reasonable accommodations for those with disabilities, as defined by the Americans with Disabilities Act, if providing in-person assistance; and

(i) Enters into an agreement with the Office regarding compliance with the standards specified in this section, and KHBE policies and procedures.

(3) Certified Application Counselors shall:

(a) Inform applicants of the functions and responsibilities of certified application counselors, other Kynectors, and participating agents; and

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with submitting an application.

(4) Certified application counselors shall not:

(a) Impose any charge or fee on applicants for application assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into exclusive referral agreements with an agent.

(5) In accordance with the procedures established in section 6, the Office shall withdraw certification from individual application counselors, or from all application

counselors associated with a particular organization, if it finds noncompliance with the terms and conditions of the application counselor agreement, KHBE policies and procedures, or an administrative regulation of the Office.

#### Section 4. In-Person Assister Program.

(1) In accordance with 45 C.F.R. 155.205(d) and (e) the Office shall establish an IPA program to authorize eligible public or private entities described in subsection (4) of this section to carry out consumer assistance functions as described in this section.

(2) An entity wishing to participate as an IPA Kynector entity with the KHBE shall:

(a) Respond to a Request for Proposal of the Office.

(b) Designate an individual to service as the participating entity administrator who shall:

1. Register with KHBE through the Kentucky Online Gateway as an administrator for the agency;

2. Serve as a primary contact for the Office;

3. Sign an IPA Kynector entity participation agreement with the Office;

4. Be responsible for ensuring that only KHBE certified Kynector employees with the entity are provided access to the KHBE through the Kentucky Online Gateway.

(c) Designate the individual employees who will participate on the KHBE through the IPA Kynector entity and who shall:

1. Complete the KHBE Kynector training provided by the Office or an approved provider.

2. Sign a Kynector participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

1 4. Register with the KHBE through the Kentucky Online Gateway; and

2 (d) Provide monthly reports to the Office including:

3 1. Number of completed applications;

4 2. Number of outreach events staffed.

5 (3) Individual employees of the IPA Kynector entity shall:

6 (a) Be no less than eighteen (18) years of age;

7 (b) Provide a state background check to the IPA entity for evidence of good  
8 character;

9 (c) Maintain a valid driver's license; and

10 (d) Travel, when necessary to assist applicants with enrollment.

11 (4) IPA kynector entities and its employees shall:

12 (a) Inform applicants of the functions and responsibilities of all Kynectors and  
13 participating agents;

14 (b) Obtain authorization for the disclosure of applicant information prior to assisting  
15 the applicant with prescreening for participation with the KHBE and completion of the  
16 application process; and

17 (c) Provide technical support to other Kynectors, Kynector entities, or the Office upon  
18 request.

19 (5) After compliance with subsection (2) and (3) of this section, an IPA- Kynector  
20 employee may:

21 (a) Facilitate enrollment for individuals, employers or employees in any QHP in the  
22 individual or small group market as soon as the QHP is offered through the KHBE;

23 (b) Assist individuals in applying for advance payments of the premium tax credit and

1 cost-sharing reductions for QHPs; and

2 (c) Assist individuals in applying for insurance affordability programs, including  
3 Medicaid or KCHIP.

4 (6) In addition to open enrollment responsibilities, and with permission of the Office,  
5 an IPA Kynector entity may engage in public education and outreach activities.

6 (7) An issuer shall not be responsible for the activities and conduct of an IPA  
7 kynector entity or its IPA kynector employees.

8 (8) An IPA kynector entity and its employee shall not:

9 (a) Impose any charge or fee on applicants for application assistance;

10 (b) Receive compensation or a referral fee from an agent;

11 (c) Enter into exclusive referral agreements with an agent; or

12 (d) Have a conflict of interest as described in section 5(x) of this regulation, during the  
13 term as an IPA kynectors.

14 (9) (a) In accordance with the procedures established in section 6, the Office shall  
15 withdraw certification from individual In-Person Assistors, or from all In-Person Assistors  
16 associated with a particular entity, if it finds noncompliance with the terms and  
17 conditions of the participation agreement, KHBE policies and procedures, or an  
18 administrative regulation of the Office.

19 (b) In addition to withdrawal of certification, the Office may enforce any contract  
20 penalties as appropriate.

## 21 Section 5. Navigator Program.

22 (1) In accordance with 45 CFR 155.210, the Office shall establish a Navigator  
23 program to award grants to eligible public or private entities described in subsection (4)



of this section.

(2) An entity wishing to participate as a navigator Kynector entity shall respond to the annual Request for Proposal or grant opportunity from the Office.

(3) The Office shall develop and publicly disseminate through the KHBE website and the Request for Proposal process:

(a) A set of standards, to be met by all entities, and individuals employed by those entities, to be awarded Navigator grants, designed to prevent, minimize and mitigate any conflicts of interest, financial or otherwise, that may exist for an entity or individuals to be awarded a Navigator grant and to ensure that all entities and individuals carrying out Navigator functions have appropriate integrity; and

(b) A set of training standards, to be met by all entities and individuals carrying out Navigator functions under the terms of a Navigator grant, to ensure expertise in:

1. The needs of underserved and vulnerable populations;
2. Eligibility and enrollment rules and procedures;
3. The range of QHP options and insurance affordability programs; and,
4. The privacy and security standards applicable under 45 CFR 155.260.

(4) (a) To receive a Navigator grant, an entity shall:

1. Be capable of carrying out at least the duties described in paragraph (e) of this section;

2. Demonstrate to the Office that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers, including uninsured and underinsured consumers, or self-employed individuals eligible for a QHP or other insurance affordability programs;

1 3. Meet any licensing, certification or other standards prescribed by the State or  
2 Exchange as described in the Request for Proposal;

3 4. Not have a conflict of interest as described in Section 5(5) of this administrative  
4 regulation, during the term as Navigator; and,

5 5. Comply with the privacy and security policies adopted by the Office.

6 (b) The Exchange shall contract with an entity as described in Section 5(4)(b)1 of  
7 this section and an entity from at least one of the other following categories for receipt of  
8 a Navigator grant:

9 1. Community and consumer-focused nonprofit groups;

10 2. Trade, industry, and professional associations;

11 3. Commercial fishing industry organizations, ranching and farming organizations;

12 4. Chambers of commerce;

13 5. Unions;

14 6. Resource partners of the Small Business Administration;

15 7. Licensed insurance agents; and

16 8. Other public or private entities or individuals that meet the requirements of this  
17 section including Indian tribes, tribal organizations, urban Indian organizations, and  
18 State or local human service agencies.

19 (5) (a) The Navigator Kynector entity shall not

20 1. Be a health insurance issuer or issuer of stop loss insurance;

21 2. Be a subsidiary of a health insurance issuer or issuer of stop loss insurance;;

22 3. Be an association that includes members of, or lobbies on behalf of, the insurance  
23 industry; or

1       4. Receive any consideration directly or indirectly from any health insurance issuer or  
2 issuer of stop loss insurance in connection with the enrollment of any individuals or  
3 employees in a QHP or a non-QHP.

4       (b) A kynector entity shall:

5           1. Submit to the office a written plan to remain free of conflicts of interest while  
6 carrying out consumer assistance functions under 45 CFR 155.205(d) and (e).

7           2. Provide information to consumers about the full range of QHP options and  
8 insurance affordability programs for which they are eligible.

9           3. Disclose to the office and to each consumer who receives application  
10 assistance from the entity or individual kynector:

11               (a) Any lines of insurance business, not covered by the restrictions on  
12 participation and prohibitions on conduct in 45 CFR 155.210(d), which the entity  
13 or individual kynectors intends to sell while carrying out the consumer assistance  
14 functions;

15               (b) Any existing employment relationships, or any former employment  
16 relationships within the last five (5) years, with any health insurance issuers or  
17 issuers of stop loss insurance, or subsidiaries of health insurance issuers or  
18 issuers of stop loss insurance, including any existing employment relationships  
19 between a spouse or domestic partner and any health insurance issuers or  
20 issuers of stop loss insurance, or subsidiaries of health insurance issuers or  
21 issuers of stop loss insurance; and

22               (c) Any existing or anticipated financial, business, or contractual relationships  
23 with one or more health insurance issuers or issuers of stop loss insurance, or

1 subsidiaries of health insurance issuers or issuers of stop loss insurance.

2 (6) An entity and its employees that serve as a Navigator Kynector shall carry out at  
3 least the following duties:

4 (a) Maintain expertise in eligibility, enrollment, and program specifications and  
5 conduct public education activities to raise awareness about the Office and KHBE;

6 (b) Provide information and services in a fair, accurate and impartial manner and  
7 provide information regarding other health programs;

8 (c) Facilitate selection of a QHP;

9 (d) Provide referrals to the Kentucky Health Insurance Advocate, DOI, CHFS  
10 Ombudsman, or any other appropriate State agency or agencies, for any enrollee with a  
11 grievance, complaint, or question regarding their health plan, coverage, or a  
12 determination under the plan or coverage;

13 (e) Provide information in a manner that is culturally and linguistically appropriate to  
14 the needs of the population being served by the Exchange, including individuals with  
15 limited English proficiency, and ensure accessibility and usability of Navigator tools and  
16 functions for individuals with disabilities in accordance with the Americans with  
17 Disabilities Act, 42 USC 12101 and section 504 of the Rehabilitation Act, 29 U.S.C.  
18 794.

19 (7) Navigators Kynector entities and employees of Navigator Kynectors shall not:

20 (a) Impose any charge or fee on applicants for application assistance;

21 (b) Receive compensation or a referral fee from an agent; or

22 (c) Enter into exclusive referral agreements with an agent.

23 (8) An issuer shall not be responsible for the activities and conduct of a Navigator

1 Kynector entity or its employees.

2 (9) (a) In accordance with the procedures established in section 6, the Office shall  
3 withdraw certification from an individual Navigator Kynector, or from all Navigators  
4 Kynectors associated with a particular entity, if it finds noncompliance with the terms  
5 and conditions of the participation agreement, KHBE policies and procedures, or an  
6 administrative regulation of the Office.

7 (b) In addition to withdrawal of certification, the Office may enforce any contract  
8 penalties as appropriate.

9 Section 6. Withdraw of Certification and Appeals.

10 (1) If the Office finds noncompliance with the terms and conditions of a participating  
11 agreement, KHBE policies and procedures, or an administrative regulation of the Office,  
12 the Office shall:

13 (a) Provide the Kynector entity or Kynector employee with notice that the applicable  
14 certification will be withdrawn as of the date on the notice;

15 (b) Allow the Kynector entity or Kynector employee, an opportunity to submit  
16 evidence of compliance or additional information.

17 (c) Review any information submitted by the Kynector entity or Kynector employee;  
18 and

19 (d) Based on the information provided, issue a decision to withdraw or reinstate the  
20 applicable certification of the Kynector entity or individual employee.

21 (2) A Kynector entity or Kynector employee may appeal a decision to withdraw in  
22 accordance with subsection (1) of this section to the Office?

23 (3) After one (1) year of a decision to withdraw certification of a Kynector entity,

- 1 Kynector employee, the individual or entity may reapply in accordance with this
- 2 administrative regulation.

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